

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

SOPHON PHAN,

Plaintiff,

No. CIV S-04-1177 GGH

vs.

JO ANNE B. BARNHART,  
Commissioner of  
Social Security,

ORDER

Defendants.

Presently before the court is plaintiff's March 17, 2005 application for attorneys' fees under the Equal Access to Justice Act ("EAJA").

Background

On September 29, 2004, this court filed a stipulated remand order entering judgment, and remanding the case pursuant to Sentence Four of 42 U.S.C. § 405(g). On the same day, the court entered a final judgment in the case. On March 17, 2005, plaintiff filed an application for EAJA fees. The Commissioner has filed an opposition, claiming the application is untimely.

Discussion

The filing period for EAJA fees in sentence four remand cases begins after the final judgment is entered by the court and the appeal period has expired. Melkonyan v. Sullivan,

1 501 U.S. 89, 111 S.Ct. 2157, 2165 (1991). Plaintiff has thirty days from the time the judgment is  
2 no longer appealable in which to file his or her application for EAJA fees. Shalala v. Schaefer,  
3 509 U.S. 292, 113 S.Ct. 2625 (1993). If the application is not submitted within the time period  
4 allowed, an award is barred. Scarborough v. Principi, 541 U.S. 401, 124 S. Ct. 1856, 1865  
5 (2004).

6 In this case, the judgment became final and unappealable on November 29, 2004,  
7 sixty days after judgment was entered. Plaintiff then had thirty days in which to file an  
8 application, or by December 29, 2004. The application for EAJA fees was filed on March 17,  
9 2005, more than two and a half months after the period for filing had expired.

10 Conclusion

11 Accordingly, IT IS ORDERED that plaintiff's March 17, 2005 application for  
12 EAJA fees is denied.

13 DATED: 10/26/05

14  
15 /s/ Gregory G. Hollows

16 \_\_\_\_\_  
GREGORY G. HOLLOWS  
U.S. MAGISTRATE JUDGE

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